

CHAPTER 51-17 SALE OF CHECKS ACT

51-17-01. (Repealed effective January 2, 2006) Short title. This chapter may be cited as The Sale of Checks Act.

51-17-02. (Repealed effective January 2, 2006) Definitions. Terms used in this chapter are defined as follows:

1. "Check" means any check, draft, money order, personal money order, or other instrument for the transmission or payment of money.
2. "Commissioner" means the commissioner of financial institutions.
3. "Deliver" means to deliver a check to the first person who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.
4. "Licensee" means a person duly licensed by the commissioner pursuant to this chapter.
5. "Person" means any individual, partnership, association, joint stock association, trust, corporation, limited liability company, or any other form of business enterprise but does not include the government of the United States or North Dakota.
6. "Personal money order" means any instrument for the transmission or payment of money which is signed by the purchaser or remitter, whether or not the signer thereby appoints the seller of the money order as the signer's agent for the receipt, transmission, or handling of money, and whether or not such instrument is also signed by some other person in addition to the purchaser or remitter.
7. "Sell" means to sell, to issue, or to deliver a check.

51-17-03. (Repealed effective January 2, 2006) Inapplicability. This chapter does not apply to banks, trust companies, building and loan associations, savings and loan associations, or credit unions, if organized under the laws of this state or the United States, or to the receipt of money by an incorporated telegraph company at any office or agency thereof for immediate transmission by telegraph. Nothing in this chapter enlarges or diminishes the rights, authorities, and powers which the foregoing entities may otherwise have.

51-17-04. (Repealed effective January 2, 2006) License required. No person, except those specified in section 51-17-03 or agents of a licensee as specified in section 51-17-11, may engage in the business of selling checks as a service or for a fee or other consideration without having first obtained a license hereunder. Any person engaged in said business on July 1, 1973, may continue to engage without a license therein until the commissioner has acted upon the principal's application for a license; provided, that such application be filed within sixty days after July 1, 1973.

51-17-05. (Repealed effective January 2, 2006) Qualifications. To qualify for a license hereunder an applicant shall meet the following requirements:

1. The applicant shall have a net worth of at least fifty thousand dollars computed according to generally accepted accounting principles.
2. The financial responsibility, financial condition, and business experience, and character and general fitness of the applicant must be such as reasonably to warrant

the belief that applicant's business will be conducted honestly, carefully, and efficiently. To the extent deemed advisable by the commissioner, the commissioner may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

51-17-06. (Repealed effective January 2, 2006) Applications. Each application for such a license must be made in writing and under oath to the commissioner in such form as the commissioner may prescribe. The application must state the full name and business address of:

1. The proprietor, if the applicant is an individual.
2. Every member, if the applicant is a partnership or association.
3. Every trustee and officer, if the applicant is a trust.
4. The corporation and each officer and director thereof, if the applicant is a corporation.
5. The limited liability company and each manager and governor thereof, if the applicant is a limited liability company.

51-17-07. (Repealed effective January 2, 2006) Accompanying fee, statements, and bond. Each application for a license must be accompanied by:

1. An investigation fee of four hundred dollars, which is not subject to refund, shall be in addition to the annual license fee. Fees must be deposited in the financial institutions regulatory fund.
2. Financial statements reasonably satisfactory to the commissioner.
3. A surety bond issued by a company authorized to issue such bonds in this state, in the principal sum of twenty-five thousand dollars and in an additional principal sum of five thousand dollars for each location in this state, in excess of one, through which the applicant proposes to sell checks as provided in section 51-17-11, but in no event may the bond be required to be in excess of two hundred fifty thousand dollars. If the bond accompanying the application be in a principal sum of less than two hundred fifty thousand dollars, the application must also be accompanied by a list of the locations through which the business is to be conducted in this state. The bond must be in form satisfactory to the commissioner and must run to the state for the protection and benefit of any claimants against the applicant or applicant's agents to secure the faithful performance of the obligations of the applicant and applicant's agents with respect to the receipt, handling, transmission, and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event may exceed the principal sum of the bond. Such claimants against the applicant or applicant's agents may themselves bring suit directly on the bond, or the attorney general may bring suit thereon in behalf of such claimants, either in one action or successive actions. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the commissioner and thereafter must be relieved of liability for any breach of condition occurring after the effective date of said cancellation.
4. In lieu of such corporate surety bond or bonds, the applicant may deposit with the commissioner or with such bank as the commissioner may approve bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond. The securities must be deposited as aforesaid and held to secure the same

obligations as would the surety bond, but the depositor is entitled to receive all interest and dividends thereon, has the right, with the approval of the commissioner, to substitute other securities for those deposited, and is required so to do on written order of the commissioner made for good cause shown.

51-17-08. (Repealed effective January 2, 2006) Investigation - Granting of license.

Upon the filing of an application in due form, accompanied by the fee and documents mentioned in section 51-17-07, the commissioner shall investigate to ascertain whether the qualifications prescribed by section 51-17-05 have been met. If the commissioner finds that such qualifications have been met, and if the commissioner approves the said documents and finds that said bond or deposit is in the prescribed amount, the commissioner shall issue to the applicant a license to engage in the business of selling checks in this state.

51-17-09. (Repealed effective January 2, 2006) Maintenance of bond or securities.

After a license has been granted, the licensee shall maintain said bond or securities in the amount prescribed by section 51-17-07, as follows:

1. Each licensee who does not have on file or deposit a bond or securities, as aforesaid, in the undiminished principal sum of two hundred fifty thousand dollars, shall file quarterly reports with the commissioner setting forth the locations at which the licensee sells checks in this state as of January first, April first, July first, and October first in each year, the report for each such date being due on or before the fifteenth day thereafter. Within ten days following the filing of such a report, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations and may be decreased to reflect any decrease in the number of locations.
2. If the commissioner shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or in part, the commissioner may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this chapter, such order to be complied with within thirty days following service thereof upon the licensee.

51-17-10. (Repealed effective January 2, 2006) Annual license fee. Each licensee shall pay to the commissioner annually on or before June fifteenth of each year a license fee of three hundred dollars, which must be deposited in the financial institutions regulatory fund.

51-17-11. (Repealed effective January 2, 2006) Agents. A licensee may conduct the licensee's business at one or more locations within this state through or by means of such agents as the licensee may from time to time designate and appoint, and such agents are not required to obtain a license under this chapter; provided, however, that no agent may at the same time be the agent of more than one person.

51-17-12. (Repealed effective January 2, 2006) Liability of licensees. Each licensee is liable for the payment of all checks which that licensee sells, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state; and a licensee who sells a check, whether directly or through an agent, upon which the licensee is not designated as maker or drawer shall nevertheless have the same liabilities with respect thereto as if the licensee had signed the check as the drawer thereof.

51-17-13. (Repealed effective January 2, 2006) Disclosure of responsibility. Every check sold by a licensee, directly or through an agent, must bear the name of the licensee clearly imprinted thereon.

51-17-14. (Repealed effective January 2, 2006) Examination of books and records. The commissioner shall have the right, reasonably, to examine the books and records of any licensee operating in accordance with the provisions of this chapter at such licensee's expense, and if it appears that such licensee's net worth is less than fifty thousand dollars or that the

licensee's financial affairs are unsound in such degree and manner as to affect the solvency of such licensee's operations, the commissioner is authorized to obtain a restraining order, or a temporary or permanent injunction without bond, in any court of competent jurisdiction to prevent such licensee, or any of the licensee's agents, from continuing in business.

51-17-15. (Repealed effective January 2, 2006) Revocation of license - Investigations. The commissioner may revoke a license on any ground on which the commissioner may refuse to grant a license or for violation of any provision of this chapter. In furtherance of the foregoing, the commissioner, if the commissioner has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books, and records of the licensee. The reasonable costs of an investigation hereunder must be borne by the licensee.

51-17-16. (Repealed effective January 2, 2006) Hearings. No license may be denied or revoked except after a hearing thereon. The commissioner shall give the applicant or licensee at least twenty days' written notice of the time and place of such hearing by certified mail addressed to the principal place of business of such applicant or licensee. Any order of the commissioner denying or revoking such license must state the grounds upon which it is based, may not be effective until twenty days after written notice thereof has been sent by certified mail to the applicant or licensee at such principal place of business, and is subject to judicial review.

51-17-17. (Repealed effective January 2, 2006) Penalty. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.